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Acting United States Trustee, Region 17

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

|                          |   |   |
|--------------------------|---|---|
| In re:                   | ) | Case No.: 13-28288-D-11                 |
|                          | ) |   |
|                          | ) | D.C. No.: UST-1                         |
| MICHAEL WESTLY MATRACIA, | ) |   |
|                          | ) | Date: October 2, 2013                   |
| Debtor.                  | ) | Time: 10:00 a.m.                        |
|                          | ) | Place: Robert T. Matsui U.S. Courthouse |
|                          | ) | Courtroom 34 (Bardwil, J.)              |
|                          | ) | Sacramento, California                  |

UNITED STATES TRUSTEE’S OBJECTION TO  
DEBTOR’S SMALL BUSINESS NON-DESIGNATION

TO THE HONORABLE ROBERT S. BARDWIL, U.S. BANKRUPTCY JUDGE:

August B. Landis, the Acting United States Trustee for the Eastern and Northern Districts of California and the District of Nevada (“United States Trustee”) hereby objects to the above-captioned debtor’s non-designation as a “small business,” pursuant to FED.R.BANKR.P. 1020(b), and, as grounds therefor, would respectfully show the Court the following:

I. INTRODUCTION

1. The Debtor should be designated as a small business debtor as defined in 11 U.S.C. § 101(51D).

2. This Chapter 11 case was filed on June 19, 2013.

1 3. On the voluntary petition commencing this case, the debtor, Michael Westly Matracia  
2 (“Debtor”), checked the box indicating that “Debtor is not a small business debtor as defined in  
3 11 U.S.C. § 101(51D)” (“Small Business Non-Designation”). *See* Docket No. 1, Voluntary  
4 Petition.

5 4. On the voluntary petition, the Debtor also checked the box indicating “Debtor’s  
6 aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less  
7 than \$2,490,925.” *See id.*

8 II. OBJECTION

9 5. The Debtor’s Small Business Non-Designation is not correct.

10 6. Section 101(51D) of title 11 of the United States Code states:

11 (51D) The term “small business debtor”--

12 (A) subject to subparagraph (B), means a person engaged in commercial or  
13 business activities (including any affiliate of such person that is also a debtor  
14 under this title and excluding a person whose primary activity is the business  
15 of owning or operating real property or activities incidental thereto) that has  
16 aggregate noncontingent liquidated secured and unsecured debts as of the date  
17 of the filing of the petition or the date of the order for relief in an amount not  
18 more than \$2,490,925 (excluding debts owed to 1 or more affiliates or  
19 insiders) for a case in which the United States trustee has not appointed under  
20 section 1102(a)(1) a committee of unsecured creditors or where the court has  
determined that the committee of unsecured creditors is not sufficiently active  
and representative to provide effective oversight of the debtor; and

18 (B) does not include any member of a group of affiliated debtors that has  
19 aggregate noncontingent liquidated secured and unsecured debts in an amount  
20 greater than \$2,490,925 (excluding debt owed to 1 or more affiliates or  
insiders).

21 *See* 11 U.S.C. § 101(51D) (Westlaw, Aug. 26, 2013).

22 7. The Debtor’s occupation is landscape contractor. *See* Docket No. 1, Schedule I.

23 8. The Debtor is a sole proprietor doing business as “PondPro.” *See* Docket No. 1,  
24 Statement of Financial Affairs, Item 18. The nature of the Debtor’s business activity is  
25 landscaping. *See id.*

26 9. Thus, it is apparent that the nature of the Debtor’s primary business activity is not “the  
27 business of owning or operating real property or activities incidental thereto.” *See* 11 U.S.C. §  
28 101(51D).

10. The Debtor's total liabilities are \$453,393.11. *See* Docket No. 1, Summary of Schedules.

11. The United States Trustee has not appointed a committee of unsecured creditors in this case.

12. There are no bankruptcy cases in the last 8 years, filed by a debtor who is affiliated with the Debtor. *See* Docket No. 1, Voluntary Petition.

13. The meeting of creditors in this case was concluded on July 25, 2013. *See* Declaration of Edmund Gee, ¶ 6, filed herewith.

14. This objection is timely filed, not later than 30 days after the conclusion of the meeting of creditors. *See* FED.R.BANKR.P. 1020(b).

15. Judicial notice is requested of documents filed in this case and referenced above, and the information appearing thereon, pursuant to FED.R.EVID. 201.

### III. CONCLUSION

16. Based on the foregoing, the Court should determine the Debtor to be a "small business debtor" as defined in 11 U.S.C. § 101(51D).

WHEREFORE, the United States Trustee requests that the Court to sustain the United States Trustee's objection and/or grant such relief as the Court deems appropriate.

Respectfully submitted,

Dated: August 26, 2013

/s/ Edmund Gee  
EDMUND GEE

Attorney for August B. Landis,  
Acting United States Trustee, Region 17